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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 NOMIK NAZARIAN,  
12 Plaintiff,  
13 v.  
14

15 NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
16 Defendant.  
17

Case No. CV 17-1114 JC

MEMORANDUM OPINION

18 **I. SUMMARY**

19 On February 10, 2017, plaintiff Nomik Nazarian filed a Complaint seeking  
20 review of the Commissioner of Social Security's denial of plaintiff's application  
21 for benefits. The parties have consented to proceed before the undersigned United  
22 States Magistrate Judge.

23 This matter is before the Court on the parties' cross motions for summary  
24 judgment, respectively ("Plaintiff's Motion") and ("Defendant's Motion")  
25 (collectively "Motions"). The Court has taken the Motions under submission  
26 without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; February 15, 2017, Case  
27 Management Order ¶ 5.

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1 Based on the record as a whole and the applicable law, the decision of the  
2 Commissioner is AFFIRMED. The findings of the Administrative Law Judge  
3 (“ALJ”) are supported by substantial evidence and are free from material error.

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**  
5 **DECISION**

6 On December 30, 2015, plaintiff filed an application for Disability  
7 Insurance Benefits alleging disability beginning on March 1, 2011, due to colon  
8 cancer, carpal tunnel syndrome, lateral epicondylitis, and pulmonary nodules  
9 (Administrative Record (“AR”) 20, 163, 178). The ALJ examined the medical  
10 record, and on June 24, 2016, heard testimony from plaintiff (who was represented  
11 by a non-attorney representative and assisted by an Armenian-language  
12 interpreter) and from vocational and medical experts. (AR 32-71).

13 On August 18, 2016, the ALJ determined that plaintiff was not disabled  
14 through September 30, 2013 (*i.e.*, the “date last insured”). (AR 20-28).  
15 Specifically, the ALJ found that through the date last insured: (1) plaintiff  
16 suffered from the severe impairment of colon cancer in remission status post  
17 hemicolectomy and chemotherapy (AR 22); (2) plaintiff’s impairment did not meet  
18 or medically equal a listed impairment (AR 24); (3) plaintiff retained the residual  
19 functional capacity to perform a full range of light work (20 C.F.R. § 404.1567(b)  
20 (AR 24); (4) plaintiff could perform past relevant work as a real estate agent (AR  
21 27-28); and (5) plaintiff’s statements regarding the intensity, persistence, and  
22 limiting effects of subjective symptoms were not entirely consistent with the  
23 medical evidence and other evidence in the record (AR 25).

24 On December 19, 2016, the Appeals Council denied plaintiff’s application  
25 for review. (AR 1).

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### III. APPLICABLE LEGAL STANDARDS

#### A. Administrative Evaluation of Disability Claims

To qualify for disability benefits, a claimant must show that he or she is unable “to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012) (quoting 42 U.S.C. § 423(d)(1)(A)) (internal quotation marks omitted). To be considered disabled, a claimant must have an impairment of such severity that he or she is incapable of performing work the claimant previously performed (“past relevant work”) as well as any other “work which exists in the national economy.” Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)).

To assess whether a claimant is disabled, an ALJ is required to use the five-step sequential evaluation process set forth in Social Security regulations. See Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th Cir. 2006) (citations omitted) (describing five-step sequential evaluation process) (citing 20 C.F.R. §§ 404.1520, 416.920). The claimant has the burden of proof at steps one through four – *i.e.*, determination of whether the claimant was engaging in substantial gainful activity (step 1), has a sufficiently severe impairment (step 2), has an impairment or combination of impairments that meets or equals a listing in 20 C.F.R. Part 404, Subpart P, Appendix 1 (step 3), and retains the residual functional capacity to perform past relevant work (step 4). Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citation omitted). The Commissioner has the burden of proof at step five – *i.e.*, establishing that the claimant could perform other work in the national economy. Id.

#### B. Federal Court Review of Social Security Disability Decisions

A federal court may set aside a denial of benefits only when the Commissioner’s “final decision” was “based on legal error or not supported by

substantial evidence in the record.” 42 U.S.C. § 405(g); Trevizo v. Berryhill, 871 F.3d 664, 674 (9th Cir. 2017) (citation and quotation marks omitted). The standard of review in disability cases is “highly deferential.” Rounds v. Commissioner of Social Security Administration, 807 F.3d 996, 1002 (9th Cir. 2015) (citation and quotation marks omitted). Thus, an ALJ’s decision must be upheld if the evidence could reasonably support either affirming or reversing the decision. Trevizo, 871 F.3d at 674-75 (citations omitted). Even when an ALJ’s decision contains error, it must be affirmed if the error was harmless. Treichler v. Commissioner of Social Security Administration, 775 F.3d 1090, 1099 (9th Cir. 2014) (ALJ error harmless if (1) inconsequential to the ultimate nondisability determination; or (2) ALJ’s path may reasonably be discerned despite the error) (citation and quotation marks omitted).

Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Trevizo, 871 F.3d at 674 (citation and quotation marks omitted). It is “more than a mere scintilla, but less than a preponderance.” Id. When determining whether substantial evidence supports an ALJ’s finding, a court “must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner’s conclusion[.]” Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014) (citation and quotation marks omitted).

#### **IV. DISCUSSION**

Plaintiff essentially contends that a remand or reversal is warranted because the ALJ failed properly to evaluate the medical opinion evidence and plaintiff’s statements regarding her subjective symptoms. (Plaintiff’s Motion at 4-17). The Court disagrees.

##### **A. The ALJ Properly Evaluated the Medical Opinion Evidence**

Plaintiff contends that the ALJ failed properly to consider the opinions of certain unspecified treating physicians. (Plaintiff’s Motion at 4) (citing AR 218-

1 448, 485-1260, 1261-2036, 2037-53, 2054-71, 2072, 2073-76). For the reasons  
2 discussed below, plaintiff has not shown that a reversal or remand is required on  
3 the asserted basis.

#### 4 **1. Pertinent Facts**

5 The following are referred to collectively as the “Kaiser Opinions”:

6 A June 29, 2016, “Work Status Report” “authorized by” Kaiser Permanente  
7 Dr. Roberto Rodriguez stated “[t]his patient is placed off work from 3/1/2011  
8 through 12/30/2011[.]” and under the section for “[o]ther needs and/or  
9 restrictions” stated “[p]atient on treatment[.]” (AR 2076).

10 A July 7, 2016, “Work Status Report” “authorized by” Kaiser Permanente  
11 Dr. Ani Galfayan noted “[d]ate onset of condition” as March 31, 2011, that  
12 plaintiff had been diagnosed with colon cancer, and that “[t]his patient is placed  
13 off work from 1/1/2012 through 12/31/2015[.]” (AR 2074).

14 Another July 7, 2016, “Work Status Report” authorized by Dr. Galfayan  
15 noted “[d]ate onset of condition” as March 31, 2011, and again that “[t]his patient  
16 is placed off work from 1/1/2012 through 12/31/2015[.]” (AR 2075).

#### 17 **2. Pertinent Law**

18 In Social Security cases, the amount of weight given to medical opinions  
19 generally varies depending on the type of medical professional who provided the  
20 opinions, namely “treating physicians,” “examining physicians,” and  
21 “nonexamining physicians” (*e.g.*, “State agency medical or psychological  
22 consultant[s]”). 20 C.F.R. §§ 404.1527(c)(1)-(2) & (e), 404.1502, 404.1513(a);  
23 Garrison, 759 F.3d at 1012 (citation and quotation marks omitted). A treating  
24 physician’s opinion is generally given the most weight, and may be “controlling”  
25 if it is “well-supported by medically acceptable clinical and laboratory diagnostic  
26 techniques and is not inconsistent with the other substantial evidence in [the  
27 claimant’s] case record[.]” 20 C.F.R. § 404.1527(c)(2); Revels v. Berryhill, 874  
28 F.3d 648, 654 (9th Cir. 2017) (citation omitted). In turn, an examining, but non-

1 treating physician's opinion is entitled to less weight than a treating physician's,  
2 but more weight than a nonexamining physician's opinion. Garrison, 759 F.3d at  
3 1012 (citation omitted).

4 A treating physician's opinion, however, is not necessarily conclusive as to  
5 either a physical condition or the ultimate issue of disability. Magallanes v.  
6 Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). An ALJ may reject  
7 the uncontroverted opinion of a treating physician by providing "clear and  
8 convincing reasons that are supported by substantial evidence" for doing so.  
9 Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005) (citation omitted).

10 Where a treating physician's opinion is contradicted by another doctor's opinion,  
11 an ALJ may reject the treating physician's opinion only "by providing specific and  
12 legitimate reasons that are supported by substantial evidence." Garrison, 759 F.3d  
13 at 1012 (citation and footnote omitted). In addition, an ALJ may reject the opinion  
14 of any physician, including a treating physician, to the extent the opinion is "brief,  
15 conclusory and inadequately supported by clinical findings." Bray v.  
16 Commissioner of Social Security Administration, 554 F.3d 1219, 1228 (9th Cir.  
17 2009) (citation omitted).

18 An ALJ may provide "substantial evidence" for rejecting a medical opinion,  
19 in part, by "setting out a detailed and thorough summary of the facts and  
20 conflicting clinical evidence, stating his [or her] interpretation thereof, and making  
21 findings." Garrison, 759 F.3d at 1012 (citing Reddick v. Chater, 157 F.3d 715,  
22 725 (9th Cir. 1998)) (quotation marks omitted).

### 23 **3. Analysis**

24 Here, Plaintiff's Motion does not provide any sufficiently specific and  
25 persuasive legal argument that would justify a remand in the instant case on the  
26 asserted basis. For instance, plaintiff initially wrote that she "takes issue with the  
27 ALJ's consideration of the medical evidence[,] and "[s]pecifically . . . takes issue  
28 with the ALJ's consideration and rejection of the . . . treating source opinions from

1 his [sic] doctors at Kaiser Permanente[,]” and that “the ALJ failed to articulate a  
2 legally sufficient rational to reject the opinions.” (Plaintiff’s Motion at 4) (citing  
3 AR 218-448, 485-1260, 1261-2036, 2037-53, 2054-71, 2072, 2073-76). Plaintiff,  
4 however, did not identify which specific opinions from which of plaintiff’s  
5 multiple treating doctors at Kaiser Permanente plaintiff contends the ALJ  
6 improperly rejected, but instead simply cited to over 1800 pages of medical  
7 records, including what appears to be all of plaintiff’s treatment records from  
8 Kaiser Permanente (AR 218-448, 485 2071, 2073-76), as well as a June 6, 2016  
9 medical opinion from a physician who does not appear to be associated with  
10 Kaiser Permanente at all (AR 2072). Such sweeping and conclusory argument is  
11 insufficient to justify a remand here. See Carmickle v. Commissioner, Social  
12 Security Administration, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (declining to  
13 address challenge to ALJ’s finding where claimant “failed to argue th[e] issue with  
14 any specificity in [] briefing”) (citation omitted); Independent Towers of  
15 Washington v. Washington, 350 F.3d 925, 929 (9th Cir. 2003) (appellate courts  
16 “review only issues which are argued specifically and distinctly in a party’s  
17 opening brief”) (citations omitted); see also Carmen v. San Francisco Unified  
18 School District, 237 F.3d 1026, 1030-31 (9th Cir. 2001) (on summary judgment  
19 parties must provide citations to location in record where specific facts may  
20 “conveniently be found” and court may limit its review to those parts of the record  
21 the parties have “specifically referenced”); Keenan v. Allan, 91 F.3d 1275, 1279  
22 (9th Cir. 1996) (district court not required to “scour the record” on summary  
23 judgment where party has failed to identify specific record evidence with  
24 reasonable particularity) (citations omitted); Estakhrian v. Obenstine, 233 F. Supp.  
25 3d 824, 836 (C.D. Cal. 2017) (court need not search for comprehensible claims in  
26 “the noodles” of party’s “spaghetti approach” legal argument which  
27 metaphorically “heave[s] the entire contents of a pot against the wall in hopes that  
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1 something would stick[.]” (citing Independent Towers of Washington, 350 F.3d at  
2 929; internal quotation marks omitted).

3 Plaintiff also appears to argue that the ALJ specifically rejected the Kaiser  
4 Opinions “[without] any legitimate evidentiary basis [for doing so]” and “simply  
5 substituted his own lay opinion for that of the [sic] medical professional[.]” and  
6 states that “[t]he ALJ is wrong[.]” essentially because “[t]he ALJ’s articulated  
7 rationale is nothing more than the ALJ, and the non-examining physicians, looking  
8 at the same treatment notes as the treating doctors from Kaiser and reaching a  
9 different opinion[.]” and that “the ALJ’s lay conclusion to reject the treating  
10 physicians form [sic] Kaiser is not supported in the record.” (Plaintiff’s Motion at  
11 7) (citations omitted). Nonetheless, Plaintiff’s Motion provides no specific  
12 argument regarding how the ALJ *in this case* specifically erred in such respect,  
13 and thus fails to persuade the Court that a remand is warranted on such conclusory  
14 grounds. See, e.g., DeBerry v. Commissioner of Social Security Administration,  
15 352 Fed. Appx 173, 176 (9th Cir. 2009) (declining to consider claim that ALJ  
16 failed properly to apply Social Security law where claimant did not argue the issue  
17 “with any specificity” in her opening brief and failed to cite “any evidence or legal  
18 authority” in support of her position) (citing Carmickle, 533 F.3d at 1161 n.2);  
19 Brollier v. Astrue, 2013 WL 1820826, at \*6 & n.113 (N.D. Cal. Apr. 30, 2013)  
20 (court not required to consider “conclusory unsupported arguments” where  
21 claimant “fail[ed] to provide any analysis supporting [his position] or argue that  
22 [ALJ’s alleged error] would necessarily have altered the ALJ’s ultimate  
23 determination”) (citation omitted); see generally Independent Towers of  
24 Washington, 350 F.3d at 929 (party’s “bare assertion of an issue” in briefing “does  
25 not preserve a claim” on appeal) (citations omitted); Moody v. Berryhill,  
26 245 F. Supp. 3d 1028, 1032-33 (C.D. Ill. 2017) (“The Court ‘cannot fill the void  
27 [in a claimant’s analysis] by crafting arguments and performing the necessary legal  
28 research.’”) (citing Anderson v. Hardman, 241 F.3d 544, 545 (7th Cir. 2001));



1 Rogal v. Astrue, 2012 WL 7141260, \*3 (W.D. Wash. Dec. 7, 2012) (“It is not  
2 enough merely to present an argument in the skimpiest way, and leave the Court to  
3 do counsel’s work—framing the argument and putting flesh on its bones through a  
4 discussion of the applicable law and facts.”) (citations omitted), report and  
5 recommendation adopted, 2013 WL 557172 (W.D. Wash. Feb. 12, 2013), aff’d,  
6 590 Fed. Appx. 667 (9th Cir. 2014).

7 Plaintiff also asserts that “the ALJ did not state clear and convincing  
8 reasons for rejecting Plaintiff’s testimony.” (Plaintiff’s Motion at 13). A remand  
9 or reversal is not warranted on this basis because, as discussed below, the ALJ  
10 properly rejected the Kaiser Opinions for legally sufficient reasons supported by  
11 substantial evidence.

12 First, the Kaiser Opinions ultimately opine simply that plaintiff should have  
13 been “off work” during certain time periods in the past. (AR 2074-76). As the  
14 ALJ suggested, the Kaiser Opinions did not explain whether “off work” meant  
15 plaintiff had been unable to engage in “just [plaintiff’s] past work” or was  
16 precluded from “all work” entirely. (AR 27; see AR 2074-76). As the ALJ also  
17 noted, the Kaiser Opinions provided “no detailed explanation and no proposal of  
18 any specific functional limitations as an assessment of what the [plaintiff] could  
19 still do despite the [plaintiff’s] impairments.” (AR 27). Hence, the ALJ was  
20 entitled to assign “little weight” to the Kaiser Opinions’ statement that plaintiff  
21 needed to be “off work,” because “[s]uch a vague conclusion is not highly  
22 informative.” (AR 27); Bray, 554 F.3d at 1228 (citation omitted); see also Thomas  
23 v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002) (“The ALJ need not accept the  
24 opinion of any physician, including a treating physician, if that opinion is brief,  
25 conclusory, and inadequately supported by clinical findings.”); Morgan v.  
26 Commissioner of Social Security Administration, 169 F.3d 595, 601 (9th Cir.  
27 1999) (“Where medical reports are inconclusive, ‘questions of credibility and  
28 resolution of conflicts in the testimony are functions solely of the

1 [Commissioner].”) (citations omitted); Jonker v. Astrue, 725 F. Supp. 2d 902, 909  
2 (C.D. Cal. 2010) (“[T]he ALJ can discredit a physician’s opinion if it is  
3 conclusory, brief, and unsupported by medical evidence.”) (citing Matney v.  
4 Sullivan, 981 F.2d 1016, 1019 (9th Cir. 1992)); cf. Vincent v. Heckler, 739 F.2d  
5 1393, 1394-95 (9th Cir. 1984) (An ALJ must provide an explanation only when he  
6 rejects “significant probative evidence.”) (citation omitted).

7         Second, the ALJ also properly rejected the Kaiser Opinions to the extent  
8 they addressed an issue reserved exclusively to the Social Security Administration.  
9 (AR 27). Specifically, non-medical, conclusory opinions that a plaintiff is  
10 disabled or unable to work (*e.g.*, “placed off work”) are not binding on the  
11 Commissioner, and may be rejected outright. See Ukolov v. Barnhart, 420 F.3d  
12 1002, 1004 (9th Cir. 2005) (“Although a treating physician’s opinion is generally  
13 afforded the greatest weight in disability cases, it is not binding on an ALJ with  
14 respect to the existence of an impairment or the ultimate determination of  
15 disability.”) (citation omitted); Boardman v. Astrue, 286 Fed. Appx. 397, 399 (9th  
16 Cir. 2008) (“[The] determination of a claimant’s ultimate disability is reserved to  
17 the Commissioner . . . a physician’s opinion on the matter is not entitled to special  
18 significance.”); see also 20 C.F.R. § 404.1527(d)(1) (“We are responsible for  
19 making the determination or decision about whether you meet the statutory  
20 definition of disability. . . . A statement by a medical source that you are  
21 ‘disabled’ or ‘unable to work’ does not mean that we will determine that you are  
22 disabled.”).

23         Finally, the ALJ properly rejected the Kaiser Opinions in favor of  
24 the conflicting opinions of the testifying medical expert, Dr. Michael G. Bloom,  
25 who essentially opined that plaintiff had the residual functional capacity to  
26 perform light work. (AR 26, 48). Dr. Bloom’s testimony constituted substantial  
27 evidence supporting the ALJ’s decision since, as the ALJ noted (AR 26), it was  
28 supported by and consistent with the other medical evidence in the record. See

1 Morgan, 169 F.3d at 600 (testifying medical expert opinions may serve as  
2 substantial evidence when “they are supported by other evidence in the record and  
3 are consistent with it”); see also Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th  
4 Cir. 2001) (“Although the contrary opinion of a non-examining medical expert  
5 does not alone constitute a specific, legitimate reason for rejecting a treating or  
6 examining physician’s opinion, it may constitute substantial evidence when it is  
7 consistent with other independent evidence in the record.”) (citing Magallanes,  
8 881 F.2d at 752).

9 Accordingly, a remand or reversal is not warranted on this basis.

10 **B. The ALJ Properly Evaluated Plaintiff’s Subjective Symptoms**

11 Plaintiff contends that a remand or reversal is warranted because the ALJ  
12 failed to articulate legally sufficient reasons for rejecting plaintiff’s subjective  
13 complaints. (Plaintiff’s Motion at 9-16). The Court disagrees.

14 **1. Pertinent Law**

15 When determining disability, an ALJ is required to consider a claimant’s  
16 impairment-related pain and other subjective symptoms at each step of the  
17 sequential evaluation process. 20 C.F.R. § 404.1529(a) & (d). Accordingly, when  
18 a claimant presents “objective medical evidence of an underlying impairment  
19 which might reasonably produce the pain or other symptoms [the claimant]  
20 alleged,” the ALJ is required to determine the extent to which the claimant’s  
21 statements regarding the intensity, persistence, and limiting effects of his or her  
22 symptoms (“subjective statements” or “subjective complaints”) are consistent with  
23 the record evidence as a whole and, consequently, whether any of the individual’s  
24 symptom-related functional limitations and restrictions are likely to reduce the

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1 claimant's capacity to perform work-related activities. 20 C.F.R. § 404.1529(a),  
2 (c)(4); Social Security Ruling ("SSR") 16-3p, 2017 WL 5180304, at \*4-\*10.<sup>1</sup>

3 When an individual's subjective statements are inconsistent with other  
4 evidence in the record, an ALJ may give less weight to such statements and, in  
5 turn, find that the individual's symptoms are less likely to reduce the claimant's  
6 capacity to perform work-related activities. See SSR 16-3p, 2017 WL 5180304, at  
7 \*8. In such cases, when there is no affirmative finding of malingering, an ALJ  
8 may "reject" or give less weight to the individual's subjective statements "only by  
9 providing specific, clear, and convincing reasons for doing so." Brown-Hunter v.  
10 Colvin, 806 F.3d 487, 488-89 (9th Cir. 2015).<sup>2</sup> This requirement is very difficult  
11 to satisfy. See Trevizo, 871 F.3d at 678 ("The clear and convincing standard is the  
12 most demanding required in Social Security cases.") (citation and quotation marks  
13 omitted). Nonetheless, if an ALJ's evaluation of a claimant's subjective  
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15 <sup>1</sup>Social Security Rulings reflect the Social Security Administration's ("SSA") official  
16 interpretation of pertinent statutes, regulations, and policies. 20 C.F.R. § 402.35(b)(1). Although  
17 they "do not carry the 'force of law,'" Social Security Rulings "are binding on all components of  
18 the . . . Administration[.]" and are entitled to deference if they are "consistent with the Social  
19 Security Act and regulations." 20 C.F.R. § 402.35(b)(1); Bray, 554 F.3d at 1224 (citations and  
20 quotation marks omitted); see also Heckler v. Edwards, 465 U.S. 870, 873 n.3 (1984) (discussing  
21 weight and function of Social Security rulings). Social Security Ruling 16-3p superseded SSR  
22 96-7p and, in part, eliminated use of the term "credibility" from SSA "sub-regulatory policy[]" in  
23 order to "clarify that subjective symptom evaluation is not an examination of an individual's  
24 [overall character or truthfulness] . . . [and] more closely follow [SSA] regulatory language  
25 regarding symptom evaluation." See SSR 16-3p, 2017 WL 5180304, at \*1-\*2, \*10-\*11. The  
26 SSA recently republished SSR 16-3p making no change to the substantive policy interpretation  
27 regarding evaluation of a claimant's subjective complaints, but clarifying that the SSA would  
28 apply SSR 16-3p only "[when making] determinations and decisions on or after March 28,  
2016[.]" and that federal courts should apply "the rules [regarding subjective symptom  
evaluation] that were in effect at the time" an ALJ's decision being reviewed became final. SSR  
16-3p, 2017 WL 5180304, at \*1, \*13 n.27.

26 <sup>2</sup>It appears to the Court, based upon its research of the origins of the requirement that  
27 there be "specific, clear and convincing" reasons to reject or give less weight to an individual's  
28 subjective statements absent an affirmative finding of malingering, that such standard of proof  
remains applicable. See Trevizo, 871 F.3d at 678-79 & n.5 (citations omitted).

1 statements is reasonable and is supported by substantial evidence, it is not the  
2 court's role to second-guess it. See Thomas, 278 F.3d at 959 (citation omitted).

## 3                   **2.     Analysis**

4           Here, plaintiff argues that the ALJ provided "woefully insufficient reasons"  
5 for rejecting her subjective statements. (Plaintiff's Motion at 10). Curiously,  
6 however, plaintiff's own briefing does not identify any specific subjective  
7 complaint plaintiff believes the ALJ improperly rejected. (Plaintiff's Motion at 9-  
8 16). Plaintiff does state that she testified "[a]t the hearing . . . about the nature and  
9 extent of her condition[,]" but Plaintiff's Motion supports this assertion merely by  
10 citing the entire transcript of all testimony from the administrative hearing in  
11 plaintiff's case. (Plaintiff's Motion at 10) (citing AR 32-71). Plaintiff also says  
12 "[t]he ALJ briefly summarized that testimony in the decision," but simply cites  
13 two pages from the ALJ's decision which address multiple issues, and plaintiff  
14 does not specify what portion of "that testimony" the ALJ purportedly rejected in  
15 error. (Plaintiff's Motion at 10) (citing AR 24-25). Again, such sweeping and  
16 conclusory arguments are insufficient to justify a remand here. See Carmickle,  
17 533 F.3d at 1161 n.2 (citation omitted); Independent Towers of Washington, 350  
18 F.3d at 929 (citations omitted); Carmen, 237 F.3d at 1030-31; Keenan, 91 F.3d at  
19 1279 (citations omitted).

20           Similarly, plaintiff also asserts that the ALJ "simply sets forth the oft  
21 rejected boilerplate language numerous courts have rejected as boilerplate," the  
22 ALJ "[apparently] simply rejects [plaintiff's] testimony based on a belief that the  
23 testimony is not credible because it lacks support in the objective medical  
24 evidence[,]" "the ALJ failed to articulate any rationale sufficient to demonstrate  
25 [plaintiff] was anything other than credible[,]" the ALJ generally "did not consider  
26 [plaintiff's] credible testimony[,]" "did not identify clear and convincing reasons  
27 supporting her [sic] disbelief[,]" but instead "articulated generalities." (Plaintiff's  
28 Motion at 11-13, 15). As discussed below, however, such conclusory assertions

1 somewhat mischaracterize the ALJ's decision, are belied by the record, and  
2 generally fail to persuade the Court that a remand is warranted in this case.

3 First, the ALJ properly gave less weight to plaintiff's subjective statements  
4 based on plaintiff's failure to seek a level or frequency of medical treatment that  
5 was consistent with the alleged severity of plaintiff's subjective complaints. See  
6 Molina, 674 F.3d at 1113 (ALJ may properly consider "unexplained or  
7 inadequately explained failure to seek treatment or to follow a prescribed course of  
8 treatment" when evaluating claimant's subjective complaints) (citations and  
9 internal quotation marks omitted); SSR 16-3p, 2016 WL 1119029, at \*7-\*8 (ALJ  
10 may give less weight to subjective statements where "the frequency or extent of  
11 the treatment sought by an individual is not comparable with the degree of the  
12 individual's subjective complaints, or if the individual fails to follow prescribed  
13 treatment that might improve symptoms. . . ."). For example, as the ALJ pointed  
14 out, in April of 2012, after her cancer was in remission, plaintiff only complained  
15 about "problems with constipation and cramps" and "a skin rash related to her  
16 chemotherapy treatment" – both of which were resolved with medical treatment.  
17 (AR 25) (citing Exhibit 1F at 32-33, 100-02, 124-28, 142 [AR 249-50, 317-19,  
18 341-45, 359]); cf, e.g., Tommasetti v. Astrue, 533 F.3d 1035, 1040 (9th Cir. 2008)  
19 (evidence that claimant "responded favorably to conservative treatment"  
20 inconsistent with reports of disabling pain); Warre v. Commissioner of Social  
21 Security Administration, 439 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments that  
22 can be controlled effectively with medication are not disabling. . . .") (citations  
23 omitted); Bailey v. Colvin, 659 Fed. Appx. 413, 415 (9th Cir. 2016) (evidence that  
24 "impairments had been alleviated by effective medical treatment," to the extent  
25 inconsistent with "alleged total disability[,] specific, clear, and convincing reason  
26 for discounting subjective complaints) (citation omitted).

27 Second, the ALJ properly gave less weight to plaintiff's subjective  
28 statements to the extent plaintiff engaged in activities which require a greater level

1 of functioning than plaintiff alleges she could actually do. See Burrell v. Colvin,  
2 775 F.3d 1133, 1137 (9th Cir. 2014) (inconsistencies between claimant’s  
3 testimony and claimant’s reported activities valid reason for giving less weight to  
4 claimant’s subjective complaints) (citation omitted); SSR 16-3p, 2016 WL  
5 1119029, at \*7 (ALJ may determine that claimant’s symptoms “are less likely to  
6 reduce his or her capacities to perform work-related activities” where claimant’s  
7 subjective complaints are inconsistent with evidence of claimant’s daily activities)  
8 (citing 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3)). For example, as the ALJ  
9 noted, contrary to plaintiff’s allegations of disabling symptoms, within several  
10 months after her cancer was in remission, plaintiff apparently reported that she had  
11 been exercising five days a week for 20 minutes each day. (AR 26) (citing Exhibit  
12 1F at 155 [AR 372]).

13 A claimant “does not need to be ‘utterly incapacitated’ in order to be  
14 disabled.” Vertigan v. Halter, 260 F.3d 1044, 1050 (9th Cir. 2001) (citation  
15 omitted). Nonetheless, this does not mean, as plaintiff appears to suggest  
16 (Plaintiff’s Motion at 13-15), that an ALJ must find that a claimant’s daily  
17 activities demonstrate an ability to engage in full-time work (*i.e.*, eight hours a  
18 day, five days a week) in order to discount conflicting subjective symptom  
19 testimony. To the contrary, even where a claimant’s activities suggest some  
20 difficulty in functioning, an ALJ may give less weight to subjective complaints to  
21 the extent a claimant’s apparent actual level of activity is inconsistent with the  
22 extent of functional limitation the claimant has alleged. See Reddick, 157 F.3d at  
23 722 (ALJ may consider daily activities to extent plaintiff’s “level of activity [is]  
24 inconsistent with [the] . . . claimed limitations”).

25 To the extent plaintiff asserts, without any citation to the Administrative  
26 Record, that “[her] descriptions of her activity level are far short of what is needed  
27 to demonstrate the capacity to perform work activity on a sustained basis[,]”  
28 “[n]othing in [plaintiff’s] testimony provides any indication that she is capable of

1 performing anything other than a few basic daily activities and certainly not what  
2 is required of substantial gainful work activity[,]” and “[plaintiff] testified that  
3 while able to perform activities of daily living she is only able to do so for short  
4 periods of time[.]” (Plaintiff’s Motion at 14), this Court declines to second guess  
5 the ALJ’s reasonable contrary determination that “[plaintiff’s] ability to exercise  
6 regularly tends to suggest that the alleged symptoms and limitations may have  
7 been overstated[.]” (AR 26), even if the evidence could give rise to inferences  
8 more favorable to plaintiff. Trevizo, 871 F.3d at 674-75 (citations omitted).  
9 Plaintiff’s conclusory assertion that “[plaintiff’s] descriptions of her limitations  
10 demonstrate that she is incapable of maintaining substantial gainful work activity  
11 because of her severe impairments[,]” for which plaintiff merely cites the entire  
12 transcript from her administrative hearing (Plaintiff’s Motion at 13) (citing AR 32-  
13 71), does not support doing otherwise.

14 Finally, the ALJ properly gave less weight to plaintiff’s subjective  
15 complaints, in part, because there was “no [objective medical] evidence to support  
16 any disabling functional limitation” for plaintiff after her cancer went into  
17 remission and prior to the date last insured. (AR 25) (citing Exhibit 1F at 11-12,  
18 21, 35, 48-49, 63, 70, 127, 144, 160, 167, 176 [AR 228-29, 252, 265-66, 280, 287,  
19 344, 361, 377, 384, 393]; Exhibit 9F at 7, 12 [AR 2060, 2065]); see Burch, 400  
20 F.3d at 681 (“Although lack of medical evidence cannot form the sole basis for  
21 discounting pain testimony, it is a factor that the ALJ can consider. . . .”); SSR 16-  
22 3p, 2016 WL 1119029, at \*5 (“[ALJ may] not disregard an individual’s statements  
23 about the intensity, persistence, and limiting effects of symptoms solely because  
24 the objective medical evidence does not substantiate the degree of impairment-  
25 related symptoms alleged by the individual.”).

26 Accordingly, a reversal or remand is not warranted on the asserted basis.

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1 **V. CONCLUSION**

2 For the foregoing reasons, the decision of the Commissioner of Social  
3 Security is AFFIRMED.

4 LET JUDGMENT BE ENTERED ACCORDINGLY.

5 DATED: June 7, 2018

6 /s/

7 Honorable Jacqueline Chooljian  
8 UNITED STATES MAGISTRATE JUDGE  
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